

Application No. 09/936,145  
Paper Dated November 24, 2003  
**Response Under 37 C.F.R. § 1.116 Expedited Procedure**  
**Examining Group 1600**  
Attorney Docket No. 3274-011309

**REMARKS**

Claims 1, 3-16 and 21-30 are currently pending in this application. Claims 1, 3, 5-8, 11-14 and 21-30 have been canceled. Claims 4, 9 and 10 have been amended. Claims 31-35 have been added. Support the language of claim 4 is found on page 3, lines 24-27, and page 4, lines 1-4 *et seq.* Support the language of claim 9 is found on page 4, lines 19-20 *et seq.* Support the language of claim 10 is found on page 4, lines 21-23 *et seq.* Support the language of claim 31 is found on page 4, lines 12-15 *et seq.* Support the language of claim 32 is found on page 4, lines 19-20 *et seq.* Support the language of claim 33 is found on page 4, lines 21-23 *et seq.* Support the language of claims 34 and 35 is found on page 5, lines 5-8 *et seq.* No new matter has been added. In view of these amendments and of the following remarks, Applicants believe that all the asserted rejections are in condition for withdrawal and all pending claims 4, 9-10, 15-16 and 31-35 are in condition for allowance.

Claim 1 and claims 3-30 which depend directly or indirectly from claim 1 stand rejected under 35 U.S.C. 112, second paragraph, for asserted indefiniteness. Claim 1 has been canceled, thus mooted this rejection.

Claims 1, 3, 5-6, 8-16, 21, 23-24 and 26-30 stand rejected under 35 U.S.C. 112, first paragraph, for asserted lack of enablement. Claims 1, 3, 5-8, 11-14 and 21-30 are being canceled herewith without prejudice, claims 4, 9 and 10 have been amended, and new claims 31-35 have been added. Applicants note that claims 4 and 7 are deemed to be both enabled and free of the prior art. Claim 4 has been amended into an independent form and now recites a promoter having a sequence of SEQ ID NO: 1. New claim 31 corresponds to canceled claim 7 and recites a promoter having a sequence of SEQ ID NO: 2. Thus, by incorporating the SEQ ID NO: 1 and 2 into independent claims 4 and 31, respectively, the enablement rejection has been overcome.

Claims 1-3, 5-6, 8-16, 21-24 and 26-30 stand rejected under 35 U.S.C. 103(a) as assertedly being unpatentable over Palva et al., but applicant understands that claims 4 and 7 are free of the prior art. As stated above, claim 4 has been amended into an independent form and recites a promoter having a sequence of SEQ ID NO: 1 having a restriction site for BamHI. New claim 31 corresponds to canceled claim 7 and recites a promoter having a sequence of SEQ ID NO: 2 having restriction sites for BamHI, SmaI, KpnI, SacI and EcoRI in this order from the 5'

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end. Because claims 9-10 and 15-16 depend directly or indirectly from claim 4, and claims 32-35 depend directly or indirectly from claim 31, Applicants submit that all of the pending claims 4, 9-10, 15-16 and 31-35 are thus in condition for allowance.

Applicants submit that amended claims 4 and 9-10 and new claims 31-35 are proper for entry after a final office action for the following reasons. Claim 4 recites a promoter of  $\alpha$ -amylase derived from *Bacillus amyloliquefaciens*, wherein the promoter has a sequence of Sequence ID No. 1 that has a restriction site for BamHI, which is the same subject matter as previously presented claim 4, but is now in independent form. Claim 31 recites a promoter of  $\alpha$ -amylase derived from *Bacillus amyloliquefaciens*, wherein the promoter has a sequence of SEQ. ID No. 2 that has restriction sites for BamHI, SmaI, KpnI, SacI and EcoRI in this order from 5' end, respectively, which is the same subject matter as claim 7, but is now in independent form. Amended claim 9 recites the same subject matter as previously presented claim 9, but claim 9 depends from claim 4 rather than claim 1. Amended claim 10 recites the same subject matter as previously presented claim 10, but with the added limitation that the restriction site is a BamHI restriction site, a limitation that was originally recited in canceled claim 7. New claim 32 recites the same subject matter as previously presented claim 9. New claim 33 recites the same subject matter as previously presented claim 10. Finally, claims 34 and 35 recite the same subject matter as claims 15 and 16. Accordingly, entry and allowance of amended claims 4 and 9-10, and new claims 31-35 are respectfully requested.

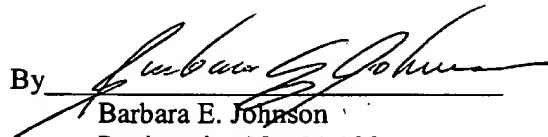
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For all the foregoing reasons, it is believed that amended claims 4 and 9-10 and new claims 31-35 are in condition for allowance. Withdrawal of the asserted rejections and allowance of all pending claims 4, 9-10, 15-16 and 31-35 is respectfully requested.

Respectfully submitted,

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